



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT



ARNOLD  
SCHWARZENEGGER  
GOVERNOR

For Meeting Date: December 11, 2008

**Agenda Item No. 16:** Discussion of Public Complaint Pertaining to the Pacific Aggregates, Nichols Canyon Mine (CA Mine ID #91-33-0098), Barry Coley (Agent), Pacific Aggregates (Operator), City of Lake Elsinore, Riverside County.

**INTRODUCTION:** In December of 2007, the State Mining and Geology Board (SMGB) received a public complaint from a surface mining operator pertaining to the appropriate entitlement of another surface mining operation located within the jurisdiction of the City of Lake Elsinore (City). The SMGB subsequently sought assistance from the Department of Conservation, Office of Mine Reclamation (OMR) to review that particular aspect of the allegation.

**BACKGROUND:** When the SMGB receives a public complaint pertaining to the overall performance of a lead agency under the Surface Mining and Reclamation Act of 1975 (SMARA), pursuant to the SMGB's Administrative Procedure No. PP96-02, a determination is quickly made as to whether immediate action is required. Immediate action is defined as a "situation where a lead agency does not act to assure SMARA compliance and irreparable environmental damage or substantial endangerment to the public health appears imminent". When immediate action is not considered necessary, a technical review by OMR and/or discussion of the violation(s) at the SMGB's next regular business meeting may be undertaken.

**Receipt of Public Complaints:** The SMGB received correspondence dated December 28, 2007, from Mr. Robert W. Snodgrass with Wyroc Materials, Inc. (Wyroc), alleging that the SMARA lead agency, the City of Lake Elsinore (City), 1) has "*inappropriately entitled*" Pacific Clay Products, and its subsidiary Pacific Aggregates, Nichols Canyon Mine (CA Mine ID #91-33-0098), a surface mining operation located within the jurisdiction of the City of Lake Elsinore, to operate without a surface mining permit, 2) such action by the City generated an "*unfair competitive advantage*" over his company's two surface mining sites located approximately two miles from said operation, and 3) such action placed Wyroc "*in jeopardy*" and generated a "*real risk of being forced to discontinue*" its operations. It was also made clear in the complaint that "*although the City acted in good faith, the project was approved due to the misrepresentation of the true facts (and/or law) involved by the applicant and their consultants and/or a misunderstanding by the City of the appropriate standards under SMARA.*" Additional information was provided by Mr. Snodgrass in May 2008; wherein Mr. Snodgrass reiterated his claim that Pacific Clay/Pacific Aggregates does not have a vested right to mine.



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OMR's Findings: Per the request of the SMGB, OMR, in early 2008, reviewed pertinent documents contained in mine files maintained by OMR, documents provided by Wyroc, and documents provided by the City to OMR. In summary, OMR accepted the City's determination that Pacific Clay Products, and its subsidiary Pacific Aggregates, were not required to obtain a permit based on a vested right to operate the Nichols Canyon Mine. Furthermore, OMR concluded that the appropriate recourse for Wyroc in this matter, or for any interested individual, would be 1) to exhaust all administrative remedies with the City, and 2) seek redress through the courts, if appropriate. OMR recommended continued review of issues associated with the August 1978 reclamation plan for the Nichols Canyon Mine remain, and indicated that they were working with the City to address these issues.

Request of SMGB: With respect to Mr. Snodgrass's complaint regarding Pacific Aggregate's Nichols Canyon surface mining operation, at its March 13, 2008, regular business meeting, the SMGB heard comments from a surface mining operator pertaining to the status of vested rights for the Pacific Aggregates, Inc., Nichols Canyon Mine, located within the jurisdiction of the City of Lake Elsinore. The SMGB directed its Executive Officer to request from the City any information or documents which the city used or relied upon in making a vested rights determination for this surface mining operation. Such request was made in correspondence dated April 16, 2008. Another formal request was made in correspondence dated September 2, 2008. No information from the City has been provided in response to the SMGB's request to date. However, in correspondence dated September 10, 2008, the City's Attorney, Ms. Barbara Leibold, it was indicated that "*no further action with regards to the City's determination of Pacific Aggregate's vested mining rights*" would be taken.

**EXECUTIVE OFFICER'S RECOMMENDATION:** The information being provided is for the SMGB's information, and no findings or recommendations are offered at this time.

Respectfully submitted:

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Stephen M. Testa  
Executive Officer



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